IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

MFA.No. 1149 of 2000

O.P(MV).NO.76/1997 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM.
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APPELLANTS/APPLICANTS 1 AND 3:
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1. **SUNITHA UNNIKRISHNAN, AGED 27 YEARS,**
   D/O. JAYA UNNIKRISHNAN, `UJJAYINA',
   T.C. 36/133, J.P. NAGAR, VALLAKKADAVU,
   THIRUVANANTHAPURAM.

2. **VIVEK.H. (MINOR), REPRESENTED BY HIS MOTHER,**
   SUNITHA UNNIKRISHNAN, `UJJAYINI',
   J.P. NAGAR, VALLAKKADAVU,
   THIRUVANANTHAPURAM.

BY ADV. SRI.V.N.GOPALAKRISHNAN NAIR,
ADV. SRI.G.SURARSHAN.

RESPONDENTS/RESPONDENTS 1 TO 3 AND APPLICANT NO.2:
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1. **R. JOSEPH, MANAGER,**
   ST. JOSEPHS, L.P.S. PALAYAM,
   THIRUVANANTHAPURAM,
   (OWNER OF VAN NO. KL-01-F-8612).

2. **B. RAMESH KUMAR, T.C. 12/949,**
   BARTON HILL, THIRUVANANTHAPURAM.

3. **DIVISIONAL MANAGER,**
   UNITED INDIA INSURANCE COMPANY LIMITED,
   L.M.S. BUILDINGS, PALAYAM, THIRUVANANTHAPURAM.

M.F.A. NO. 1149/2000:

4. M.KAMALAMMA, AGED 61 YEARS,
D/O. MADHAVI AMMA, KARAKKATTU VEEDU,
ANANTHAKARA LANE, VANCHIYOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR,
SRI.A.AHZAR,
SRI.HAKKIM SHAH S.C.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/10/2007, ALONG WITH M.F.A NO. 1154/2000,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.Nos.1149 & 1154 OF 2000

Dated 10th October, 2007

JUDGMENT

Koshy,J.

A scooter ridden by one Harikumar with the appellant in M.F.A.No.1154 of 2000 as pillion rider involved in an accident as a tempo van bearing registration No.KL.01.F.8612 driven by the second respondent hit the same. Sri.Harikumar died and the pillion rider sustained serious injuries. Alleging that the accident occurred due to the sole negligence of the second respondent, driver of the tempo van, compensation was claimed by the dependents of the deceased rider and pillion rider. The tempo van was owned by the first respondent and insured by the third respondent. The Tribunal found that since it is a head on collision, there is contributory negligence on the part of the rider of the scooter also and in the petition filed by the pillion rider (O.P.(M.V) No.76 of 1997), against a claim of Rs.3,50,000/= the Tribunal awarded a compensation of Rs.1,76,030/=. In the petition filed by the dependents of the deceased rider of the scooter (O.P.(M.V)No.77/1997), against a claim of Rs.10,00,000/= Tribunal assessed a compensation of Rs.8,50,000/=, but, in view of the finding of contributory negligence, the amount awarded was only Rs.4,25,250/=. The quantum of compensation and finding of contributory negligence are disputed in these appeals by

the claimants. The occurrence of the accident and coverage of tempo van by the third respondent insurance company are not disputed. The only reason for the Tribunal to find that there is 50% negligence on the part of the rider of the scooter who was dead was that it is a head on collision and front side of both vehicles were damaged. The Tribunal held as follows:

> "According to PW.1, the accident happened due to the negligence of the 2nd respondent. Ext.A1 is the F.I.R. which shows that a crime has been registered against the 2nd respondent for rash and negligent driving under Sections 279, 337 and 304(A) of the Indian Penal Code. Ext.A2 is the charge against the 2nd respondent. Ext.A1 s the scene mahazar which shows that the place of occurrence is 1.80 metres south from the northern tarred edge of the road and the total width of the road is 7.35 metres. Ext.A12 MVI report relating to the vehicle No.KL.01.F.8612 Education Institution Bus (OminiBus) shows that front cowl dented at both sides. (2) Upper side of the right side headlight is also dented. Ext.A12 (a) MVI report relating to the scooter shows that (1) front completely damaged. (2) Left side rader broken. (3) Front seat dislocated. (4) Platform completely damaged. (5) Head light broken. (6) Left side engine cover deshaped. (7) Front mudguard completely damaged. (8) Helmet cover detached. So, from the MVI report and also in view of the pleadings, in this case, it is only to be presumed that both the vehicles had a head on collision and the accident happened due to the composite negligence of both the drivers and as such the liability of the company has to be limited to 50% only."

It is true that in the absence of evidence and other circumstances, in the case of head on collision, negligence by both drivers can be presumed. But, in this case, PW1, the applicant who was in the scooter as pillion rider deposed that the accident occurred only due to the negligence of the driver of the tempo van. He deposed that he was travelling in a scooter ridden by his son-in-law Harikumar from west to east i.e. from Inchakkal to West Fort and when they reached in front of Kailas Financiers, a tempo van driven by the second respondent came from West Fort to Inchakkal in a rash and negligent manner and hit on the front portion of the scooter with right front portion of the tempo van. Both claimant and rider were thrown away from the scooter and sustained very serious injuries and Harikumar succumbed to the injuries. It is true that when the tempo van hit the scooter, front side of the tempo van also got damaged. The scooter was completely damaged. Ext.A9 is the F.I.R. registered by the police alleging negligence on the second respondent driver only. Ext.A10 was the charge sheet which shows that after investigation police found that only second respondent was responsible for the accident. Ext.A11 is the scene mahazar which shows that the road had a width of 7.35 metres and place of occurrence is 1.80 metres south from the northern tarred edge of the road. It shows that the scooter was on its

right side and the tempo van crossed the middle line and was running in the wrong side by about one metre from the middle line. At the same time, if the rider of the scooter was careful, the impact of the accident could have been reduced. In these circumstances, in view of the scene mahazar, width of the road and the fact that rider of the scooter was running the scooter bearing helmet in his right side, but, at the same time, he failed to save the vehicle seeing the tempo van coming in its wrong side, we are of the view that only 25% negligence need be attributed to the rider of the scooter. Therefore, appellants in M.F.A.No.1149 of 2000 will be entitled to an additional compensation of Rs.2,12,625/= more on the basis of the assessment made by the Tribunal. The deceased rider of the scooter was employed as Cashier-cum-Accountant in a private firm and his monthly income was Rs.6,000/= and he was aged only 32. Claim was filed by wife aged 23 years, minor child and mother of the deceased. Considering the total amount of compensation awarded, we are of the view that no enhancement is needed. So, the additional compensation of Rs.2,12,625/= awarded by us should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit, over and above the decreed amount by the Tribunal. On deposit of the amount, it shall be disbursed as directed by the Tribunal.

2. With regard to the quantum of compensation assessed by the Tribunal in M.F.A.No.1154 of 2000 (O.P.(M.V)No.76/1997), as far as the pillion rider is concerned, he was employed as an Accounts Officer in ISRO, a Central Government undertaking and his monthly income at the time of accident was Rs.14,605/=. He suffered 21% disability. He was 57 years old at the time of accident. His job was not lost. He continued in employment and he is also entitled to pension. There was no reduction in his salary due to the accident, but, after retirement also his disability will continue. Since he continued in employment, we are of the view that no further enhancement in the quantum of compensation is needed as he was granted a compensation of Rs.1,76,030/= with 12% interest from the date of application till deposit.

M.F.A.No.1149/2000 is partly allowed and M.F.A.No.1154 of 2000 is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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